Sanger (E. F.)

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Maine Medical Association,

JUNE 12, 1878.

BY EUGENE F. SANGER, A. M., M. D.,
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MALPRACTICE.

The aphorism that the burnt child dreads the fire applies with peculiar force to those of our profession who have had any experience with civil malpractice suits. The laws of our State permit the patient to sue the doctor at a nominal price, without any guaranty for costs, sufficient cause, or good faith; they virtually leave us at the mercy of the legal profession, ~~which,~~ who under the guise of malpractice, plunder the very men who give aid and comfort to the sick in times of need without money and without price.

The common rumseller, whom the law is enacted to destroy, has the protection of his patrons, which the surgeon does not enjoy, as the law on malpractice actually induces the patient to pounce upon his physician like a thief at night and rob him, though it may not profit the patient any, of his good name, his property, and his means of doing good.

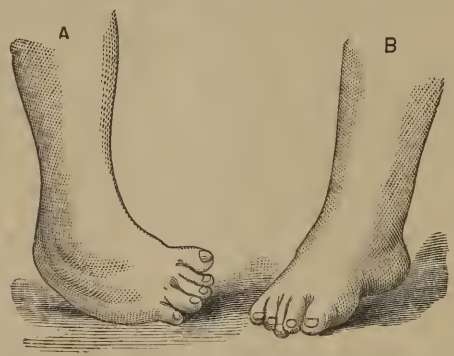
The patient descends upon his physician when he least expects it and least deserves it, in his errands of mercy and his best endeavors to relieve human suffering and correct natural or accidental deformities. These claims for damages are co-ordinate with the human imagination, and beget lawsuits which are without limit in expense and time.

I propose, as my text, my own experience, an experience which applies to the medical profession alone, as the other professions and sciences are based upon laws and principles of right and accountability which the doctor knows not of, unless it may be the *right* of the irresponsible patient to wantonly sue him without vouchers for costs and consequences, and the *accountability* of the doctor to re-

lieve and restore all human ills and injuries which come under his observation.

During the past few months, I have wasted one whole month of my time in the Court House, and been put to more than $2,000 expense, to defend two of the simplest acts of surgery, for which I received ninety cents pay.

The first case, HARRIMAN v. SANGER, was a case of congenital club-feet, or talipes equino-varus, in a child twelve months old, spastic or spasmodic in character, as is usual in this species of deformity. The operation was tenotomy of the tendo Achillis, or heel cord, and the use of the improved SCARPA shoe, with instructions to report from time to time, which they did not do. Six months afterwards, I voluntarily visited the child; found it running around, doing well, and furnished a second pair of shoes. Receiving neither pay for the shoes nor the operation, discontinued my services until re-imbursed.



A,—Condition of the feet May, 1871, at the time that I cut the heel cords and adjusted the improved Scarpa shoes. B,—Condition of the feet November, 1871, when I dismissed the case because the parents did not re-imburse me for money paid out. The posterior tibial tendon and plantar fascia still needed to be cut to prevent a relapse and perfect a cure, which the parents neglected to have done, and sued me for their neglect five years afterwards.

I was sued for $7,000, because I cut the *sheath* of the tendon in tenotomy of the tendo Achillis, spilt a few drops of blood, discontinued my visits, and used the improved SCARPA shoe! The prosecution claimed that I should have adopted the BARWELL and SAYRE theory of paralysis of the peroneal muscles, used SAYRE'S shoe with rubber tubing, electricity, and made repeated visits. The parents

and a jail-bird swore to the existence of paralysis, and three surgeons to the paralytic theory and treatment, but paralysed their own evidence by admitting a total want of experience in the SAYRE system, rubber tubing, electricity and repeated visits.

Dr. JEWELL, my assistant, the only surgeon who ever examined the child from birth to the time of the suit, testified to contraction of the heel cord and to a skillful and successful operation. Paralysis was not demonstrated at the trial. The SAYRE shoe had not been used in Massachusetts General Hospital, or Maine, prior to my operation, and the leading orthopedic authors, as ADAMS, LITTLE, BRODHURST, STROMEYER, GUERSANT, KNIGHT, &c., did not sustain the SAYRE theory. CROSBY, of New York, TEWKSBURY, HILL and ROBBINS, of this State, endorsed my treatment.

I got a verdict. It went to the law court on exceptions. Exceptions overruled; and when I applied for judgment on my bill for services, was threatened with a suit of *warrant to cure*, which caused me to drop my case, as he was poor, and I should have had to pay my own costs.

October 11, 1876, a month later, was sued again for $12,000, making attachments of $19,000 on what little property I had, and a trustee of my bank account, which forced a bond from me to get a voice in the management of my private affairs.

My second case, BOWLEY v. SANGER, was more frivolous, and yet more prolific in trouble and expense, as it was the last dying struggle of a conspired effort at my pocket. The first jury took more stock in a grass widow, who testified I would cut up a man for $20, than in their own virtue, so that I was called a second time to demonstrate to twelve of my fellow countrymen the propriety of giving free vent to a burrowing abscess in the immediate vicinity of a scrofulous knee-joint.

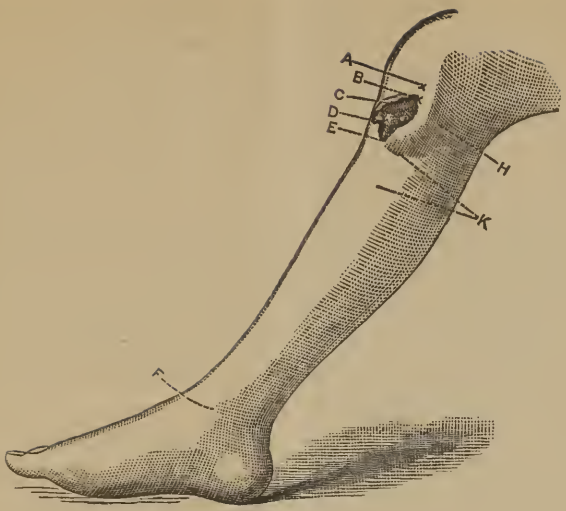
The disease of the joint, of many years' standing, had been aggravated by a blow of a stick of wood on the shin bone, below the tuberosity and back of the tubercle of the tibia, causing a diffuse abscess under the seat of the blow.

The blow was received April, 1876, and the leg had been treated three or four months by three other physicians, without improve-

ment, the last of whom had imperfectly lanced it over the knee-joint, instead of a more dependent part. The result was burrowing, infiltration, acrid pus, an imperfectly drained cavity, erysipelas, and danger of pyæmia. I was called August 12th, about a fortnight after the abscess had been lanced, and, with the assistance of Dr. WESTON, a surgeon of experience, slit open the abscess downwards, on a grooved director, cutting through the skin and fascia only, and introduced a cotton tent into a sinus which extended backwards from the bottom of the abscess towards the calf. The incision was forked at the lower end. I was dismissed twelve days afterwards, August 23, 1876, and was never permitted to see the leg again for fourteen months, until the day before it was amputated, November 5, 1877, for scrofulous disease of the knee-joint, commonly called white swelling. During all this time after it left me, the knee was treated with salves, poultices and lotions only, and the patient with white swelling was permitted to run at large without even a splint to support it.

The next week after I was dismissed, a photograph was taken by MARSTON, at the attending surgeon's request, and, as MARSTON testified, an exaggerated view, to please the surgeon, who boldly stated that I was a G—d d—n idiot; he was d—n mad with me. I had cut out a piece of sound flesh, opened the knee-joint, let out the joint-water, and ruined the knee. It was a case of malpractice, and I could be made to pay. The writ alleged, in substance, the same.

Dr. WESTON, my assistant, and the boarding master, an ignorant fellow, by name of MICHAEL FINNEGAN, were the only persons present during the laying open and dressing of this abscess. Dr. WESTON and self swore that not a particle of flesh was cut out. FINNEGAN swore that we cut out a piece $2 \times 3\frac{1}{2}$ inches, as you would cut the rot out of an apple, and flipped it into the wash-bowl. The photograph was used to sustain FINNEGAN, and the plaintiff's surgeons testified that it showed the loss of flesh and injury to the capsular ligament of the knee; they believed a piece of flesh had been cut out, because FINNEGAN said so. No photograph was taken the following winter, when my cut had entirely healed up, and no one ever saw the piece of flesh claimed to have been cut out.



A,—Knee-joint. B,—Point over the abscess where my predecessor made an opening, which was too small to discharge the matter, burrowing in the direction of D, E, K and H; at K, the leg was badly infiltrated and swollen; extended his cut from B to D and from C to E, and stretched the wound open with lint, as seen in the figure. Abscess improved rapidly. There still existed scrofulous inflammation of the head of the bone, which I proposed to trephine between B and C in a few days, and save the joint, as I had done in similar cases, but was prevented by a suit for malpractice.

To disprove the cutting out of *any* flesh, we took *their own* photograph, measured the width of the cut, which was one-fourth of an inch, the length of the shin bone, which was four inches, and the estimated length of BOWLEY'S shin bone, which was fourteen inches, and proved that the wound was not over seven-eighths of an inch wide, which was less than the ordinary gaping of a simple incision three inches long. By measuring the width of the leg on the photograph, which was a little over one and a quarter inches, we proved, if the wound represented two inches of lost flesh, without allowing for gaping even, BOWLEY was a monster twelve feet tall, with a leg as large as an elephant's, thirty-three inches around the calf. We proved that BOWLEY had been lame for years, and Dr. FOLSOM, his family physician, was threatened with a like suit, because he advised the attorney not to prosecute it as it was an in-

curable case of white swelling of years' duration. We proved that Bowley said he had a soft thing on Sanger, the Doctor said so; he meant to have some money; the cut did not amount to much.

The dissection of the leg by Dr. Bright, in the presence of Drs. Jones, Morison and Simmons, and the expert testimony of Drs. Hill, Tewksbury, Bates, Manson, Huckins, Shepard, Briggs, Bradbury, Coe, Preble, &c., all went to prove a case of caries of the bones of the joint, and that Dr. Sanger did not injure or cut into the joint, but that his operation was good surgical treatment, and, after Dr. Sanger was dismissed, an essential element of treatment to save the leg had been neglected, such as rest by the use of splints, extension, and the removal of diseased bone by drilling, trephining, excision, &c.

These two cases illustrate the extreme peril and danger, to the physician and surgeon, of civil malpractice suits. They illustrate the dangers from jealous rivals, tricky lawyers, impecunious and ignorant patients, of family conspiracies and of the unholy alliance of the sachel and scalpel. They illustrate the dangers of successful operations on neglectful and designing patients, and of operations made to appear unsuccessful by wicked doctors, and of dangers which do not cease until the grave has closed over our mortal remains, and the administrator has settled up our estates.

The risks and temptations of malpractice suits are inconceivably great. The industrious, faithful and thrifty doctor seems to be the legitimate victim of the lame, the blind and the halt. The body must be made whole, whether from accidental injuries or constitutional diseases. As the broken down merchant and speculator rushes to the faro bank and last bonanza to retrieve his broken fortunes, so the diseased and deformed use their calamities to gamble away the doctor's substance, forgetting that his patient care has saved whatever of life and limb they possess, eager to kill the hen that laid the golden egg.

The doctor becomes the sacrificial offering of the ills to which flesh is heir, as well as the scape-goat of every willful violation of established physical laws. He must restore whatever he undertakes to repair. The artisan does not pretend to restore worn out material, because he cannot create the material which he uses; so

the surgeon, in patching the human body, cannot create the vital principles of assimilation and innervation, absorption and secretion, reproduction and decay, sensation and motion, contraction and reflex action. He may modify the functions and direct the forces of the body, to a limited extent, but he has in the main to depend upon the "*vis medicatrix naturæ*."

Even nature cannot reproduce lost substances equal in structure, beauty and usefulness to the original tissues, and some cannot be reproduced at all; much less can the physician and surgeon save life or prevent deformity. Every disease has its uniform per cent. of deaths, and every fracture and morbid growth its per cent. of shortening and deformity, which all the malpractice suits in the world cannot alter. We cannot apply the square and compass to the human frame. We cannot be unerring in our judgment or avoid mistakes, because the varying factors of disease, diathesis, inheritance and vocation are too numerous to admit of fixed conclusions or uniform action.

The irresponsible quack must surely displace the experienced and responsible surgeon, if patients claim the right to compel the doctor to defend himself against irresponsible attacks at his own expense, and test the surgeon's knowledge of the general principles of surgery and his skill in every operation by a suit at law. Unless the law which enables worthless patients, by simply paying the price of a writ, to keep the surgeon constantly under the charge of the sheriff or at the mercy of lawyers is abolished, we must step down and out.

I have collected, within the past month, a few of the threatened and instituted malpractice suits in our State. You will be startled with the number, and vow you will abandon the practice. You will thank a kind Providence for an exemption, and curse the legal facilities for ruining and blowing your profession to atoms, without the benefit of the clergy, at the behest of any worthless patient or misguided and unscrupulous lawyer.

I escaped prosecution for twenty-three years of hospital and private, civil and military practice, but when the simoon struck it shook me from stem to stern; it made my hair stand on end and

my voice stick in my throat. I did not literally lose a year's growth, but I lost more than a year of study and practice from mental solicitude, which dwarfs body and mind.

There are about 600 regular physicians in this State. During the short space of one month I received communications from 114 of them, from which I have collated seventy malpractice suits, fifty-five threatened suits, and fifty-eight exemptions. The latter were largely young physicians or possessed but little available property. Not more than three or four who had been blackmailed reported, though I am knowing to quite a large number of such cases. Of those reported, only fifty-eight, or less than thirty-three per cent., escaped prosecution, threats or the payment of smart money. The inference is, that pride and fear of injury to reputation deterred a great many from reporting, and, if we had received a full report, we could show that hardly a practitioner of medicine of experience and property gets through with his professional career without some such infliction. All my reports are within the knowledge of the present generation.

Of the seventy who were sued for damages, ranging from $1,000 to $25,000, six paid from $100 to $350 rather than be dragged into the court house, three paid from $25 to $350, after one or more trials, rather than be kept there perpetually, and nine were cast in damages from $103 to $2,000. The nine plaintiffs who settled, eight of the nine who were awarded damages, and all but eight of those whose suits failed, were worthless. Out of seventy prosecutions, the plaintiffs in sixty-one of them were unable to pay taxable costs, and very many were shiftless and dissipated. Only one in eight got a verdict. The nine who were paid something prior to a trial or after one or more disagreements, aggregated only $1,950, but, as one tried his case six times and two others twice each, and as none of the plaintiffs were able to pay taxable costs, it is probable that expenses absorbed the whole amount. The nine who got verdicts amounting to $6,253 had long-repeated and expensive suits, so that not over $3,000 remained for distribution. I doubt whether the patients received much of that, in view of the chances which the lawyers took of getting their pay by stripping our profession.

These suits for malpractice were brought for the following causes: Two for fracture of the thigh within the capsule of the joint, eight for fracture of the thigh, eighteen for fracture of the leg near or through the ankle, six of the elbow, three of the forearm, two of the wrist, one of the neck of the shoulder blade, and one of the knee, one for dislocation of the thigh, two for dislocation of the elbow, two for amputation of the thigh, two for amputation of the leg, and two for amputation of the forearm, two for hip disease, two for vesico-vaginal fistula, the result of tedious labor, one for osteosarcoma of the shoulder, one for incised wound of the foot, one for excision of the thumb after fearful laceration and injury of the hand, one for abscess, one for club-foot, one for ophthalmia, one for erysipelas and abscess, and one for inversion of womb. The amount sued for was $423,640, which would have swept our profession out of existence if these suits had prevailed.

There were nine convictions, as follows: Grover, for amputation of the thigh, $2,000; Dam, for fracture and amputation at the wrist, $300; Chase's estate, for fracture of wrist, gangrene and reamputation of the arm, $1,200; Albee, for fracture of the arm, gangrene and amputation, $1,000; Campbell, for fracture of the thigh, $600; Prescott, for fracture of the tibia into the knee-joint, $400; Bullard, for dislocation of the elbow, $250; Tingley, for fracture of the thigh, $103; Allen, for fracture of the leg, $400.

There were nine settlements, as follows: one for vesico-vaginal fistula following labor, $300; one for fractured thigh within capsule of joint, $350; one fractured elbow—olecranon, $100; one fractured wrist, after one trial and disagreement, $350; one fractured neck of scapula, after six trials, $125; one fractured neck of femur, after one trial, $25; two fractured legs, $300 each; and one dislocation of the hip, $100.

We will now consider the expense of the cases which resulted in acquittal, disagreement, or were never brought to trial. Taking thirty-four suits as the basis of our estimates, sixty-one surgeons paid out more than $43,000, which, with court and other expenses, aggregates more than $100,000 wasted in speculative liti-

gation. All but three or four were groundless actions, and would not have been brought if our State law did not actually offer a premium on malpractice suits.

If we count the loss of time to surgeons and patients, including the small sums filched from the mouths of hungry children by the prosecuting attorneys, we shall find that the expenditures vastly exceeded the receipts for damages, and involved in debt and taxation the counties, without a scintilla of benefit to any one excepting the lawyers, who fatten upon us without in any way being held accountable. I think I am safe in saying that my trials alone cost the County of Penobscot $2,000 to $3,000, and me about as much more, making $5,000 to $6,000 actually thrown away.

The class of cases prosecuted were of the most aggravating and dangerous character. Congenital deformities, irremediable accidents and incurable diseases, from which patients did not expect complete restoration, but were satisfied with relief from suffering and natural results, until tempted into prosecutions which would cost them nothing, but, if successful, would pay handsomely from the hard earnings of the physician, whom the law presumes to be the pension bureau of all human ills.

Fractures of the neck of the femur rarely, if ever, result in bony union; fractured thighs have an average shortening of a half to an inch and a half; fractured joints are always restricted in motion; amputations of the forearm, arm, leg and thigh are followed by a mortality of twelve to ninety-nine per cent.; resections of joints with a smaller per cent., and both are liable to muscular retractions, gangrene, necrosis, secondary hemorrhages, deformities, secondary amputations and death; vesico-vaginal fistula may occur in any tedious labor, with or without instruments; osteosarcoma is always fatal; hip diseases generally, followed by shortening and dislocations of the thigh, are liable to extensive lacerations and imperfect results.

The largest verdict for damages in alleged malpractice was in the case of Dr. John Grover, of Bethel, amounting, with court costs, to $2,500, for "an error of judgment in not removing more of the limb," the moral of which is, in sawing off a leg, saw it off

short. The patient had been afflicted with necrosis of the thigh bone for years, which necessitated amputation of the limb. Dr. Grover successfully amputated it. Conical stump and an extension of the disease called for a second amputation, which did not prove to be high enough to include all of the diseased bone; and, as the weakness of the patient would not admit of cutting off more bone at the time, it was left to a subsequent attempt when the patient had gained sufficient strength. Finally, Dr. Sweat amputated at the hip-joint with success.

Because of the retraction of the flaps and of the rapid extension of the diseased bone, Judge Wells, in his review of the case on exceptions for a new trial, arrived at the illogical conclusion that nothing short of the entire removal of the bone at the hip would have saved life.

Retraction of flaps is not an infrequent result of any amputation. The most eminent surgeons fail sometimes to determine the limit of diseased bone, through infiltrated and indurated tissues. Dr. Grover's second amputation prepared the way for Dr. Sweat's successful one, by the removal of most of the diseased bone, which had reduced the patient, and by giving tolerance to a hip-joint amputation. The average mortality at the place where Dr. Grover amputated is seventy per cent., and at the hip-joint ninety-nine per cent. It would have been foolhardy for Grover to have incurred the additional risk in the weakened condition of the patient, when there was only one chance in a hundred under the most favorable conditions. Judges are presumed to be infallible; and, while Judge Wells would not set aside the verdict, he remitted $500 of the verdict on the ground that the jury might have been unduly influenced.

I showed, in my club-foot case, that the patient waited nearly six years before bringing suit for damages, and I now shall show that the claim is good until the doctor's estate is administered upon, four years longer. The estate of Dr. Samuel Chase, of Mount Vernon, was sued, and $2,000 damages claimed, by a hungry pack of wolves who were too cowardly to allow the doctor a defense during his life, for the amputation of the forearm, consequent upon the retraction of the flaps of a previous amputation, at

the wrist, of a mangled hand. A verdict, including costs, of about $1,200, was rendered, which pauperized his widow and children.*

Dr. Wm. Gallupe, of Bangor, was tried six times for fracture of the neck of the scapula, which cost him over $2,000. A worthless and drunken plaintiff set up the plea of an unreduced dislocation of the shoulder. There was much evidence on both sides, and the plaintiff ultimately settled for less than $150, leaving his attorneys to the tender mercies of their own consciences.

The living patient can pursue the dead doctor, and so can the living husband immolate the living doctor on the carcass of his dead wife. Dr. I. Palmer, of North Anson, was sued, and damages claimed at $2,000, for the services of his wife, who died of osteosarcoma of the head of the humerus, which the plaintiff charged was an unreduced dislocation of the humerus. Although the plaintiff was one of the nine enumerated, who were able to pay taxable costs, the defense cost the doctor over $100, who proved that the wife died of incurable cancerous disease.

The surgeon is liable for extemporaneous dressings applied to injuries received *in transitu*. Dr. J. A. Parsons, of Windham, was sued three times, with damages claimed at $8,000, for setting a wrist broken by the accidental overthrow of a carriage while passing through his village. He dressed the injury temporarily, and requested the patient to call in the family physician on her arrival in Portland. The jury disagreed, standing ten for the doctor. Before a second trial, the doctor paid $350 rather than be annoyed with a successful defence, which would have cost him more money than he paid to settle the suit, as the plaintiff was worthless. The humane act of adjusting a broken bone proved an expensive luxury to the doctor, and taught him that the next time a person got injured by the wayside he should pass by on the other side.

The law renders us liable to prosecution for the treatment of hereditary disease developed by exposure or accident. Drs. Emerson and Page were sued for morbus coxarius, or hip disease, in a boy injured by being thrown off a sled. They visited the boy two

* We have since learned that the plaintiff received $200 damages, which he spent, and more too, in lawyers' fees and expenses.

or three times; diagnosed the case and applied splints, which the father took off the next day. When the boy became of age, he sued for $1,500 damages. This action was brought by one of the present bench of judges, and, although it was dropped, it cost the doctors about $150.

We are made liable for incurable injuries, as fractures inside of the capsular ligament of the hip-joint. Dr. C. H. Rowell, of Fairfield, was sued for $10,000 for this fracture, which the prosecution claimed was a dislocation, resulting in shortening and deformity. Verdict of $1,600 rendered, but a new trial was granted, and the doctor settled for $25. Cost him $250 to defend. Dr. G. P. Jeffards was sued for the same fracture, $6,000 damages being claimed. There was not any shortening, crepitation or eversion at the time of the injury. Drs. Cooper and Brodie were once puzzled by a similar case. It resulted in less than two inches shortening, and a very useful limb. Case was referred, and resulted in a verdict against the doctor of $350. He visited the case only three or four times.

The doctor is liable to prosecution for injuries from which he is dismissed before he has determined their nature. Dr. J. M. Small, of Lewiston, was sued for $5,000 damages for a compound fracture of the ankle-joint. He was dismissed on the second visit, before he had determined whether he could save the leg or not. Doctor prevailed. Cost the plaintiff $2,400. Plaintiff got a very good leg.

The doctor is liable to prosecution in case of injury from which he is dismissed before the result can be determined or existing defects corrected. Dr. Jos. Springal was sued for $3,000 in case of fracture and contusion of the leg near the ankle. Discharged on the third week. Shortening followed. Jury disagreed and case dropped. Cost the doctor $300.

In a multitude of counsel there is safety, does not apply to our profession, because the medical counsel is liable to be included with the attending physician in malpractice suits. If the attending physician is poor and the counsel rich, the latter may have to contend single handed, as law is very discriminating in its victims.

Dr. J. A. Richards, of Farmington, has a suit pending, with $10,000 damages alleged, for fracture and contusion of the leg, which he saw but once in consultation. Advised placing it upon a splint and waiting until the swelling was reduced. Dr. Anderson, of Gray, was sued for $10,000 for two consultation visits with Dr. Stevens in a case of oblique fracture of the leg. Case non-suited. Proved that the bandages were removed by plaintiff. Cost Dr. A. $500 to defend. Attending physicians in both cases poor, although Drs. Anderson and Stevens were both sued. Dr. S. Whitmore, of Gardiner, was sued because a patient of his died from the profuse hemorrhage of a severed artery of the foot.

We are prosecuted for unavoidable accidents happening in an attempt to obviate the effects of congenital deformities. Dr. J. B. Pollard, of Orrington, was subjected to a reference suit for a vesico-vaginal fistula caused by an instrumental delivery of a woman with deformed pelvis, whom he had delivered with instruments three times before. Dr. Thomas Brown, of Paris, was sued for $6,000 in a case of vesico-vaginal fistula from malposition, protracted loss of water, prolonged pressure and instrumental delivery. Settled it for $300 and costs.

It cost Dr. N. P. Monroe, of Belfast, $1,000 to defend a case of purulent ophthalmia, with loss of sight, from getting lime into the eyes. Dr. Patten, of Monson, was sued for the treatment of a case of erysipelas. Might as well hold the mariner responsible for the disasters of the winds and waves. Dr. J. M. Jonah, of Eastport, was sued for dislocation of the hip, with fracture of the acetabulum and laceration, which he reduced. The bandages were removed, and he was not permitted to see it again. $5,000 claimed. Settled it for $100 and costs. Patient worthless. Dr. E. K. Prescott was sued for fracture of the tibia into the knee-joint. Verdict, $400 and costs. Saw case but once, and thought it was not fractured. Could hardly expect a perfect result in such a case. Dr. Thos. Frye, of Rockland, was twice sued for fracture of the thigh, and twice threatened for fracture of the leg. Three of the patients were worthless. He prevailed every time, but it cost him $4,000. It injured his practice and broke down his health. Damages as high as $20,000 were claimed.

The most vexatious suits are for warranty, because the very nature of our business precludes any such idea; and it is accusing us of idiocy or rascality to charge us with any such agreement. Dr. N. A. Hersom, of Portland, was sued for fracture of the leg, involving the ankle, followed by rheumatic arthritis. Damages laid at $5,000. The doctor prevailed, and a new trial was denied. He was sued again for warranting a cure. Although this plaintiff was one of the nine who were able to pay taxable costs, it cost the doctor $800 to prove the impossibility of a perfect result in such cases, and the absurdity of a suit for the warranty of an impossible thing.

My reports of the threatened cases were very imperfect, but I have been able to classify twenty-seven cases, as follows: Fracture of the thigh, oblique, one; fracture of the leg, six; fracture of the ankle, one; compound fracture of the leg and ankle, one; fracture of the arm, two; fracture of the forearm, two; fracture of the elbow, three; fracture of the wrist, one; dislocation of the elbow, reduced, one; dislocation of the elbow and wrist and fracture of the ulna, one, result good; Hays' amputation of a gangrenous foot, one; amputation of two fingers, slight necrosis following, one; explosion of powder, causing the loss of both eyes, one; injured leg, one; still-born child, one; craniotomy, one; *medicine*, producing miscarriage, one; causing hysteria, one; injury to health, one; sickness of daughter, one. Not one was able to pay the taxable costs of a lawsuit. Four of these surgeons were frightened into paying, because the costs of defense would be burdensome and the notoriety unenviable. One surgeon paid $100 in case of shortening of a fractured leg between one-fourth and one-half inches, which was less than the average; another surgeon paid $50 in a similar case; one paid $100 for a fractured arm, and another paid $250 for a fractured forearm. Not one dared to enforce his bill for services. If we are to pay for all still-born children, the next class of suits will be warranty in conception.

There is neither safety nor money in the practice of medicine, under the existing law. Either we must give up surgery entirely, or select, among reliable patients, cases which promise favorable results. The poor are a prolific source of malpractice suits,

and, so long as attorneys go unpunished for their black-mail attacks upon us, we must leave the afflicted poor as barbaric tribes do, to perish by the wayside, or for the towns and cities to take care of.

A law should be enacted which will protect us in the legitimate practice of our profession and secure skillful treatment to our patients. The present law enables the poor patient to throw the entire responsibility upon the surgeon, and encourages negligence and disregard of instructions, in hopes that some slight deviation from perfect results will establish a claim against the surgeon for damages, the conviction prevailing, perhaps most markedly in fractures and dislocations, that the careful and skillful surgeon possesses the power to correct all deformities and cure all diseases.

The burden of proof virtually rests upon the surgeon. The laws of disease are ignored, and imperfect results are *prima facie* evidence of guilt. Constitutional infirmities and congenital deformities are no exception. Divine law, which says we are born heirs to disease, and nature's law, which cannot perfectly restore solution of continuity and loss of substance, are forgotten. No mortal power can resist the contraction of a scar, any more than it can control the rending and lifting power of frost. Imperfect stumps, shortened limbs, deformed hands and feet, contracted tendons and rigid cicatrices, are in accordance with pathological laws, and as unalterable as astronomical, chemical and mathematical laws.

It costs the poor man comparatively nothing, under existing laws, to prove a claim which has public sympathy and prejudice in its favor, and which the surgeon has to combat by an expensive elucidation of the general principles of the medical science, as we would the problems of Euclid.

In my club-foot trial, the jury were shown a boy born with deformed feet, which did not show any marks of any surgical operation, but did show six years of parental neglect, and yet I had to send four hundred miles for my assistant, Dr. JEWELL, to prove a skillful operation, to Boston to show the universal use of SCARPA'S shoe in such cases, and for experts in and out of the State to prove that I did not injure what did not show the marks of injury, that treatment often failed, and that it often required years of treat-

ment by the parents, under the direction of a surgeon, to succeed. Should the law give a poor lawyer or a poor patient the power to put me to more expense than any surgeon in this city can save in two years' practice, without redress or the pledge of a single dollar as a guaranty of good faith in parading me before the courts to prove a negative? Are not our patients, our profession and our county the sufferers?

In my second trial, Bowley, minus a leg, and a dependent wife with an infant at the breast, were flaunting witnesses of a great calamity. I had opened an abscess, he had lost a leg; the loss of a leg was a great misfortune—*ergo*, bad surgery was the cause of this misfortune, which I must disprove by two long, expensive and tedious trials.

This case demonstrates the injustice of our statutes, which compelled me to prove, by expert testimony, that the physiological law of the gaping of incised wounds disproved the perjured loss of flesh, that the diseased joint existed prior to the alleged loss of flesh, and that the loss of a piece of flesh, as described, would not have injured a well joint. The plaintiff would not have put me to the expense of proving a *reductio ad absurdum* if the law had held him accountable for costs.

Skill in medicine is just as sensitive as capital in trade, and is bound to disappear under extra-hazardous risks. Barber phlebotomy, incantations, and the red hot searing iron, will inevitably displace surgery, or it will be confined to the rich who cannot afford to prosecute the surgeon. The present law presents the singular paradox that those who can afford to pay for skilled labor cannot afford to sue, and those who can afford to sue cannot afford to pay for such labor.

The only remedy is a law which will compel the plaintiff to pay taxable costs in case of defeat. If the poor plaintiff proves his case, he gets paid for the cost of his suit, for the damages which he received, and bankrupts the surgeon; he exchanges place with the surgeon. The plaintiff carries around a game leg, with the surgeon's money to support it, and the surgeon carries around a game reputation, with nothing to support it. Such a law will

teach the patient caution in selecting a surgeon, care in following direction, and hesitation in starting frivolous suits.

As it is now, the unfortunate patient tries to retrieve his bad luck by levying upon the hard-working surgeon, without risking or staking anything for the chance of testing what may prove to be no case at all. He sues upon the principle of flipping the coppers, heads I win, tails you lose. The suit depletes the surgeon's pocket and ruins his reputation. To pay is ruinous, to defend is ruinous, and to live in constant dread is ruinous. It blunts the moral senses, distracts the mind, destroys the courage and kills out laudable ambition, by lessening the value of reputation and the security of property, besides keeping the surgeon in constant jeopardy of being robbed by every unprincipled patient or attorney who covets his fame or property. We should be put on an equal footing, at least, with our patients.

The objection to a malpractice law is, that it is special or class legislation. Surgery is indispensable to the welfare and existence of the human race. By saving life and utilizing labor, it is a productive industry, and needs the protection of a productive industry. Practically, it receives neither the protection, support nor tolerance of law. It is a hazardous industry, full of risk and liability, and, as such, deserves the special protection of the law as much as any hazardous pursuit.

Towns are protected by special laws against the dangerous claims for damages on the highways. Previous notice of the defect and limited time to make complaint are required. No kind of a notice protects us, and the patient has six years after the accident and four after the death of the surgeon to prosecute for damages. Formerly, sheep were protected by a bounty on wolves and bears, until the latter were exterminated, and now the State proposes to exterminate the surgeons by a similar process.

We have game laws, fish laws, railroad laws, ice laws, nuisance laws, manufacturing laws and insurance laws, and why not surgical laws? Is the porgie industry more valuable than the surgical, and protecting ice fields from kerosene more important than protecting surgery in its mission of mercy? Ohio, New York, Illinois, &c., have special laws regulating the practice of medicine. In New

York, every physician must have a diploma from one of the accredited State institutions and join the County Medical Society, or be prosecuted. In Illinois, a physician cannot practice without a diploma, and in New Hampshire itinerant physicians must be examined by a medical board. Michigan, Massachusetts, &c., have a general law requiring a bond for costs. Ohio gives special protection. In Maine, any one can practice medicine and any one can sue the doctor without restrictions.

The demagogue claims that such a law would be a restriction upon the rights of the people. We have already shown that malpractice suits are without profit to the patient and oppressive to the surgeon, and that the right is merely nominal, because it don't pay. The vigorous enforcement of such a right would cut off the occasion for it and virtually abolish it, because the surgeon would abandon practice among the poor if he was held to an unnatural and ruinous accountability. The refusal of pretended friends to sign the plaintiff's bond would show hypocrisy, insincerity and want of confidence in a suit in which the bondsmen could risk nothing if the suit was well founded. The plaintiff should not be permitted to inflict costs upon the surgeon for defending a prosecution presumably wrong. His claim is not for a debt contracted by the surgeon, but for an infliction of the Almighty or of the patient's imprudence, for the relief of which he is largely dependent upon the powers of nature. The surgeon does not contract to furnish anything more than a helping hand.

The purpose of law is to prevent encroachment upon the individual rights of person and property and assert the presumption of innocence. It is not to protect the poor plaintiff, in frivolous suits for fancied grievances, against the equally poor defendant, and compel the innocent defendant, rich or poor, to pay the expenses of a prosecution unjustly forced upon him. The present law virtually forces the doctor to pay for his own defence or be defaulted. If his means are limited he cannot secure able defence, by which he becomes deprived of the presumption of innocence, as he will have to buy off cheaply what he cannot afford to defend, and sacrifice the right to practice his profession with safety. It is a wrong to the doctor, the patient and the community.

The poor are induced to abandon legitimate industries for litigation, in which failure costs nothing and success draws a prize. The law offers a premium on rascality which levies black-mail on the physician, who prefers to pay rather than contend at unequal odds with perjury. Without accountability for false swearing, they have a decided advantage over the physician. In my BOWLEY case, the Judge charged that either Dr. WESTON and myself committed perjury, or FINNEGAN, through ignorance, might be mistaken. It cost me more than $1,000 to prove that this mistake was a deliberate falsehood. Is it to be wondered at that surgeons pay to be let alone, or that our courts swarm with unprincipled attorneys who seduce the poor into the delusion of litigation for the purpose of robbery, demoralize the people and burden our counties with debt? The surgeon becomes sour and disgusted, and, in the flush of manhood, abandons the practice, or does timidly what requires zeal and courage to do well. He sees the poor-house and jail constantly staring him in the face.

I have taken pains to collect and classify the opinions of the prominent medical men of this State upon the proper law, not only to protect the interests of the surgeon but also of the patient. I have received 115 reports; eighty-two are decidedly in favor of a bond for taxable costs; four, a bond for costs and remuneration to the surgeon for trouble, &c.; eleven had not matured an opinion, and sixteen were satisfied with the present law, guarded by the following qualifications: one favored a better education of the masses in medicine; three, written exemptions from prosecution in doubtful cases; two, the jury one-half or two-thirds medical men; one, preliminary hearing; one, strict observance of medical ethics; three, higher standard of medical education, and a diploma, as an indispensable requisite; one, an expert law; one, abandon fractures and dislocations; one, common-sense jury; two, counsel and witnesses in all surgical cases; one, cover risks of prosecutions by adequate charges; and one, a dissection bill.

These reports show that seventy-five per cent. of the physicians of this State are in favor of a bond for taxable costs, thirteen per cent. advocate more protective measures still, while only nine per cent. are satisfied with the present law. With eighty-eight per cent.

of the doctors opposed to the existing law, our law-makers may rest assured that it must be modified, or the poor will not get any surgical aid whatever, and the rich a poor quality at a very high price.

The thirteen per cent. who advocate the present law with restrictions, suggest requirements more impracticable than the bond for costs. For instance, a better education of the masses in medicine, aside from other objections, would incur the risk of a little knowledge is a dangerous thing. A written exemption from prosecution in doubtful cases would be impracticable in cases of extreme peril and suffering. A jury composed of one-half to two-thirds medical men would infringe upon an accepted principle that every citizen is a peer. A closer observance of medical ethics is a parody upon the proverbial jealousy of our profession. The reports of suits and threats show, that ignorant and jealous doctors are invariably mixed up with designing and unscrupulous lawyers in these malpractice suits, making it all the more necessary that some law should be enacted to protect the good and meritorious physicians and punish the wicked lawyers. A higher standard of education and a diploma is a burlesque upon the present statutes, which give budding genius the unrestricted right to practice medicine without any study. A common-sense jury is what the law presumes. Medical counsel in difficult cases is no protection whatever, as the counsel is as liable to be sued as the attendant, and more so if the richer. Higher charges, to cover the risks, is another way of refusing calls to the poor. The abandonment of fractures and dislocations is simply to give up surgery in the country. A dissection bill has failed.

An expert law would be an excellent thing. It would exclude from court the narrow-minded and ignorant men of our profession, and confine medical expert testimony to those whose pride and special qualifications would elevate them above small local jealousies and the prejudices of ignorance. The lawyer would be unable to use them or turn their estimony to bad account, and the pay which they would be entitled to would secure good talent, capable of enlightening a jury. Under the present law, medical experts are permitted to testify upon subjects which, technically or practically, they never have had the chance or inclination to study, basing their qualifications upon an imperfect knowledge of a few

general principles of an extensive science. In my club-foot suit, the most pronounced expert witness against me confessed that he had never operated on a club-foot, never fitted a shoe, and was unacquainted with the leading authorities on orthopedic surgery.

We failed to get a bill through the last Legislature to protect the science and art of surgery, mainly through the instrumentality of a low grade of lawyers, who kept out of sight their selfish and material interests in defeating it. My only reply is: let these humane and philanthropic legislators contribute a moiety of their time and money to the suffering poor; let them run for the doctor at night, requite him for his thankless service, and, as an evidence of their sincerity and faith, become surety for the malpractice suits which they delight to encourage; let them work without retainers, relinquish their preferred claims on unsettled accounts and insolvent estates; let them step forward and cast their bread upon the waters, take the same risk that we do of prosecution for their mistakes, and the same chances of getting their pay, and their hypocritical cant will vanish into thin air. Even modify the law so as to compel pettifoggers to give bonds for taxable costs in all actions which they encourage where the plaintiff cannot, or is unwilling to, and then, when they throw their drag-net, the people will be prepared to meet the mischief which these natural enemies of prosperity and professional excellence are capable of doing.

I am satisfied that the people are with us. They realize the importance of the medical profession and the value of skilled and intelligent labor; they realize that the community need no better guaranty against malpractice than the educational record and the unrequited services of the self-sacrificing and devoted family physician, whose interests run *pari passu* with the patient's, and whose greatest reward is a consciousness of having met the approbation of his patrons and doing his work well; they realize that all laws which put the physician at the mercy of the pettifogger and the ungrateful patient simply discourage the doctor in well doing, alienate him from his patrons, and deny them, in hours of distress and affliction, good and willing treatment, which law cannot furnish and cannot force the doctor to furnish where it is not for his interest to furnish it.

DISCUSSION.

Dr. SANGER offered the following resolutions:

Resolved, That, with the existing State laws on civil malpractice, it is unsafe to practice surgery among the poor.

Resolved, That a committee of five be chosen by this Association to present the subject to the next Legislature and ask for proper legislation.

Dr. GORDON said he hoped something would be done in reference to this matter. If some relief was not obtained, the profession would be forced to take the position indicated in the resolution. The appalling statistics presented were almost enough to lead the profession to abandon the practice of surgery. Special legislation was not asked for. He claimed that it would be a benefit to the whole community. The statistics showed that, even when the plaintiff secured a verdict, he realized almost nothing from it. It went to pay the costs of court and lawyers. It was not special legislation to claim that the plaintiff should be responsible for the costs in case of defeat. If persons knew that they were to be thus responsible, they would hesitate to institute suits that had no real foundation.

Dr. SANGER said he wanted to impress upon the profession that the idea that any man could escape suit by care was a false one, as both the medical attendant and the counsel employed for the purpose of protection are often made defendants in the same suit. The statistics presented showed that any man might be prosecuted; 125 out of 600 of the physicians of this State had been prosecuted within the last generation. It was safe to conclude that there was not a physician of large practice in Maine who had not been obliged to remit his bill or make some other concession to escape suit. The present system held out an inducement to fraud and extortion. There were plenty of lawyers who would fight a suit on shares, and, notwithstanding it was contrary to law, they always managed to escape upon the principle that dog won't eat dog. The poor were induced to prosecute for what they could get. If they did not get a verdict, it cost them nothing. All that was asked was that they should give bonds for the taxable cost in case of defeat. If a man had a good case, there would be no trouble in getting bondsmen, if he *were* poor.

The subject was further discussed by Drs. OSGOOD, JEWETT and FRENCH.

The resolutions were then adopted.